

REMARKS

In response to the Office Action dated October 2, 2006, the Assignee respectfully requests reconsideration and entry of the above amendments and the following remarks. The Assignee respectfully submits that the pending claims distinguish over the cited document to *Marsh*.

Claims 1-6, 8-9, 11-15, and 17-20 are pending in this application.

Claims 1, 3-10, 12-18, and 20 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,848,397 to Marsh *et al.* Claims 2, 11, and 19 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Marsh*.

The Assignee shows, however, that the pending claims distinguish over the cited document to *Marsh*.

Telephone Interview

Examiner Van Bramer discussed this response. A telephone interview was held Monday, December 11, 2006 at 9 AM. During this interview Examiner Van Bramer made the following recommendations and/or comments.

1) Remove “at least one of” from the independent claims and, instead, recite “categorizing the advertisement time slot as overrideable and non-overrideable.” Because this is a business method application, the Patent Office will broadly construe this language to mean one of both features.

2) Remove “wherein” terminology from the claims. Again, in business methods, any “wherein” terminology is “lightly regarded” as a “result.” If the word “wherein” is removed, the Patent Office will give the terms more weight.

3) Examiner Van Bramer said the claim term “time slot” could be inherent in the cited documents. Scott Zimmerman responded that this would be a new argument, and he could therefore not respond without further consideration. Even if so, though, Scott Zimmerman pointed out that the cited documents do not teach or suggest “determining whether the advertisement and the different advertisement are nearly equal in time length.” Examiner Van Bramer agreed and said another search would have to be performed.

Rejection of Claims under § 102

Claims 1, 3-10, 12-18, and 20 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,848,397 to Marsh *et al.* A claim is anticipated only if each and every element is found in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). See also DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter “M.P.E.P.”).

Claims 1, 3-10, 12-18, and 20 are not anticipated. These claims recite, or incorporate, many features that are not disclosed by Marsh. Independent claims 1, 9, and 17, for example, recite “*categorizing the advertisement time slot as overrideable and non-overrideable.*” Support for such features may be found at least at page 9, lines 7-9 of the as-filed application. Moreover, the independent claims also recite “*determining whether the advertisement and the different advertisement are nearly equal in time length.*” Support for such features may be found at least at page 11, line 33 through page 12, line 1 of the as-filed application. Independent claim 1 is reproduced below, and independent claims 9 and 17 recite similar features.

1. An advertisement management method, comprising:

receiving programming content delivered as a scheduled lineup having an advertisement time slot;

categorizing the advertisement time slot as overrideable and non-overrideable, the overrideable advertisement time slot may have an associated advertisement replaced

with a different advertisement, and the non-overrideable advertisement time slot may not have the associated advertisement replaced;
receiving an advertiser's request to replace the advertisement with the different advertisement;
determining whether the advertisement time slot is categorized as overrideable;
determining whether the advertisement and the different advertisement are nearly equal in time length; and
if the advertisement time slot is categorized as overrideable, then replacing the advertisement with the different advertisement.

Marsh fails to anticipate at least these features. No where does *Marsh* disclose “categorizing the advertisement time slot as overrideable and non-overrideable.” The patent to *Marsh et al.* completely fails to describe time slots and, instead, discloses how higher priority advertisements may replace lower-priority advertisements. Moreover, *Marsh* also fails to disclose “determining whether the advertisement and the different advertisement are nearly equal in time length.” The patent to *Marsh et al.* completely fails to make such a determination.

Marsh, then, cannot anticipate claims 1, 3-10, 12-18, and 20. Because *Marsh* fails to disclose many features recited in these claims, Examiner Van Bramer is respectfully requested to remove the § 102 (e) rejection of claims 1, 3-10, 12-18, and 20.

Rejection of Claims under 35 U.S.C. § 103 (a)

Claims 2, 11, and 19 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Marsh*. These claims, however, depend from their respective base claims and, thus, incorporate the same distinguishing features. As the above paragraphs explained, *Marsh* is entirely silent to “categorizing the advertisement time slot as overrideable and non-overrideable” and to “determining whether the advertisement and the different advertisement are nearly equal in time length.” One of ordinary skill in the art, then, would not think that claims 2, 11, and 19 are obvious. Examiner Van Bramer is thus respectfully requested to remove the § 103 (a) rejection of claims 2, 11, and 19.

U.S. Application No. 10/020,770 Art Unit 3622
Response to October 2, 2006 Office Action

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@wzpatents.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized, cursive script.

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